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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT JUNEAU

ALASKAN BREWING, LLC, an Alaska
limited liability company,

Plaintiff,

v.

PEAKASO PARTNERS, LLC, a Colorado
limited liability company,

Defendants.

CASE NO. 1:18-cv-00016-SLG
COMPLAINT FOR BREACH OF
CONTRACT

Plaintiff, Alaskan Brewing, LLC (“Alaskan Brewing”), alleges as follows:

INTRODUCTION

1. This action is brought by Alaskan Brewing for breach of its contract with Defendant Peakaso Partners, LLC (“Peakaso”) for delivery of an enterprise resource planning (“ERP”) software system to integrate and manage Alaskan Brewing’s business operations. Alaskan Brewing was founded in 1986 and has grown to be one of largest American breweries by volume of beer produced. Alaskan Brewery distributes its beer to twenty U.S. states and is rated as one of the top 50 breweries by the Brewers Association of independent breweries, of which there are over 6,700 in the U.S.

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JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

3. Venue is proper in this judicial district under 28 U.S. Code § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district.

PARTIES

4. Plaintiff Alaskan Brewing is an Alaskan limited liability company with its headquarters at 5429 Shaune Drive, Juneau, AK 99801.

5. Defendant is a Colorado limited liability company with its headquarters at 2330 Broadway, Suite 102, Denver, CO 80205.

6. On information and belief, the membership of Alaskan Brewing is completely diverse from the membership of Peakaso.

BACKGROUND

7. In 2016, Alaskan Brewing began a search for an ERP system to accommodate its expanding business and submitted requests for information to prospective vendors. In early 2017, representatives of Defendant Peakaso responded to Alaskan Brewing's RFI, offering an ERP system called "Crafted ERP," which is held out "to meet the requirements of craft breweries both large and small."

8. Crafted ERP is advertised as being built on (non-party) NetSuite's eponymous business software, which in turn claims to be "The #1 Cloud ERP" for business. Peakaso represented that NetSuite would stand by the Crafted ERP product. Peakaso further represented that it developed certain functions of Crafted ERP, which are "Certified Built for NetSuite."

9. Alaskan Brewing also communicated with NetSuite leadership, who encouraged Alaskan Brewing to go with Peakaso rather than another vendor and assured Alaskan Brewing that if it wanted to, Alaskan Brewing could easily transition to another vendor with NetSuite's assistance.

10. In May and June 2017, Alaskan Brewing and Peakaso reviewed the functionality Alaskan Brewing required. Alaskan Brewing provided Peakaso with a written request for information (the "RFI"), which the parties reviewed and revised together to describe and prioritize the specific items Alaskan Brewing would need in its ERP system.

11. On or about June 12, 2017, Alaskan Brewing and Peakaso executed a Statement of Work (the "SOW"), which integrated the RFI. The SOW set forth certain obligations Peakaso had to provide advisory services for the implementation of Crafted ERP in the NetSuite environment, as well as specific functions and modules, some that were "out of the box" and some that were to be customized. The SOW included the total cost "based upon a fixed fee model" for the software and upgrades as well as Peakaso's implementation, support, and maintenance of the software.

12. On or about June 12, 2017, in conjunction with the SOW, Alaskan Brewing and Peakaso executed a Master Services Agreement (the "MSA"), which incorporated Peakaso's General Business Terms (the "GBT"). The MSA provides that the MSA, SOW, GBT, and attached exhibits "contain the sole and exclusive terms and conditions that will govern the rights, responsibilities and obligations of the parties with respect to the Services provided by Peakaso to Client [Alaskan Brewing]." The MSA, SOW, GBT, and RFI (attached to the SOW) are referred to in this Complaint collectively as the "Agreement."

13. The GBT provides for an initial term of one year, after which the Agreement automatically renews for an additional year, unless either party provides 30-day written notice to

terminate the Agreement. The Agreement provides that Alaskan Brewing may terminate with or without cause, but Peakaso may terminate only for breach by Alaskan Brewing.

14. Neither party has provided notice of termination, so by its terms, the Agreement renewed for one year on or about June 12, 2018 and remains in force until June 12, 2019, unless otherwise terminated by the parties, as provided in the GBT.

15. Alaskan Brewing has made all payments required under the Agreement.

16. The Agreement provided for a “go-live” date of November 1, 2017. And, between June 2017 and November 2017, Alaskan Brewing and Peakaso worked together to implement the Crafted ERP system to meet that deadline. Peakaso was not, however, able to meet the November 1 deadline.

17. Alaskan Brewing provided written notice of non-conformance to Peakaso on or about November 20, 2017. The parties agreed to move the go-live date to January 1, 2018, and Alaskan Brewing approved over \$30,000 in change orders for functionality and onsite go-live support to support the January implementation. Despite this additional investment, the implementation was not finalized at go-live.

18. Despite going live, the Crafted ERP system did not meet the requirements set forth in the parties’ Agreement. Alaskan Brewing notified Peakaso accordingly that the implementation of the Crafted ERP system was not complete and that a testing protocol needed to be put in place. To date, the deficiencies identified by Alaskan Brewing have not been rectified by Peakaso.

19. At some point in March 2018, Peakaso introduced Alaskan Brewing to representatives of another vendor, (non-party) Doozy Solutions, LLC (“Doozy”), and gave Alaskan Brewing to understand that Doozy was assisting Peakaso to meet its obligations under the Agreement. Alaskan Brewing advised Peakaso that it had no agreement with Doozy, and that ultimately the onus remained on Peakaso to fulfill its obligations under the Agreement.

20. The GBT expressly provides that “Neither party may assign or transfer this Agreement without the other party’s prior written consent.” Alaskan Brewing never consented to the assignment or transfer of the Agreement in writing or otherwise to any other party.

21. On or about June 13, 2018, Alaskan Brewing submitted a list of unmet requirements to Peakaso, but Alaskan Brewing received no response until approximately two weeks later. Finally, in July 2018, Peakaso, with representatives of Doozy in tow, met with Alaskan Brewing to address the deficiencies in Peakaso’s implementation of Crafted ERP.

22. Peakaso was unable to successfully implement the Crafted ERP system, and from August to November, the relationship between the parties continued to deteriorate. As early as August 2018, it was apparent that Peakaso wanted Alaskan Brewing to terminate the Agreement or agree to transfer Peakaso’s obligations to Doozy. But Alaskan Brewing agreed to neither.

23. On or about October 27, 2018, Alaskan Brewing became aware that Doozy, on instruction from Peakaso, had deployed a Crafted ERP release automatically in Alaskan Brewing’s system in violation of a July 10, 2018 agreement with Peakaso that no code would be deployed directly into Alaskan Brewing’s system. Alaskan Brewing’s production operations were significantly impacted and the functions to log data and transfer beer were down. The deployment introduced new defects in the system, which Alaskan Brewing continues to attempt to remedy.

24. The following is a non-exhaustive list of functions/modules set forth in the SOW that have not been implemented or have only been partially implemented:

- Dashboards, BI and Reporting.
- Accounting Basic Features: Accounting periods; Post transactions to periods, run reports by period and close books at period end.
- Expense Allocation.
- Amortization.

- Advanced Taxes.
- Transactions Setup Basic Features: Estimates; Purchase Orders.
- Inventory: Bin Management; Advanced Inventory Management; Demand Planning; Distribution Resource Planning; Available to Promise; Manufacturing WIP tracking.
- Employee Setup: Payroll Journal; Expense Reports; Approval Routing; Purchase Requests; Time Tracking; Timesheets.
- CRM Setup: CRM; Lead Conversion; Online Forms.
- Website Presence: Web Site; Fixed Assets;
- Crafted ERP: TTB Report Generator; Excise Tax Reporting, Barrel and Keg Management.
- Change Order #3: Migrate Historical Invoices for 2017; Migrate Historical Bills for 2017.

25. The GBT provides that “Upon full payment of all amounts due Peakaso in connection with this Agreement, all right, title and interest in the deliverables set out in the MSA or any associated Statement of Work will become Client’s [Alaskan Brewing’s] sole and exclusive property, except as set forth below.” Further, “...to the extent the deliverables contain Peakaso’s proprietary information, Peakaso grants Client [Alaskan Brewing] a non-exclusive, non-assignable, royalty-free license to use it in connection with the deliverables and the subject of the MSA and for no other or further use.”

CLAIM FOR RELIEF

Breach of Contract

26. Alaskan Brewing incorporates and re-alleges paragraphs 1 to 24 in this Complaint.

27. At all times relevant to this action, the Agreement between Alaskan Brewing and Peakaso has remained valid and in force.

28. Alaskan Brewing has met all its obligations under the Agreement, including payment of all sums due.

29. As described above, Peakaso failed to deliver the deliverables it was obligated to deliver under the Agreement.

30. Peakaso also breached the Agreement by assigning its responsibilities to Doozy without Alaskan Brewing's consent.

31. As a result of Peakaso's breaches of the Agreement, Alaskan Brewing has been damages in an amount to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, Alaskan Brewing requests the following relief:

1. For a judicial declaration that Peakaso has breached the Agreement;
2. For an order compelling Peakaso to remedy its breach and deliver the deliverables set forth in the Agreement at its sole expense;
3. For an order compelling Peakaso to assign all right title and interest in the deliverables and all software, including source code and object code, necessary to use the system Peakaso was obligated to deliver under the Agreement;
4. For an award of Alaskan Brewing's damages caused by Peakaso's breaches in an amount to be determined at trial;
5. For an award of Alaskan Brewing's reasonable attorney fees and other litigation costs; and
6. For such other and further relief as the Court may deem necessary and appropriate.

DATED this 19th day of November, 2018.

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